

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:05-cr-041

-vs-

Chief Magistrate Judge Michael R. Merz

:

MICHAEL D. RYAN,

Defendant.

DECISION AND ORDER

This case is before the Court on Defendant's Motion to Suppress (Doc. No. 10) which came on for hearing on March 15, 2006. The United States presented testimony of the arresting officer, Staff Sergeant Watkins, and the Defendant presented no evidence.

Upon the evidence adduced, Branch I of the Motion is without merit because no evidence was seized from Defendant's home. Branch II is without merit because Sergeant Watkins testified to personal observations which clearly gave him probable cause to believe first that Defendant has committed a moving traffic offense and second, after Defendant had been stopped for the moving offense, to believe that he was operating a motor vehicle under the influence of alcohol.

Branch IV of the Motion is also without merit as the only statements made by Defendant after his arrest were his verbal acts of refusing to participate in the field sobriety tests and to take a chemical test of his breath. These are not admissions, although they are verbal acts which may be inculpatory. *South Dakota v. Neville*, 459 U.S. 553 (1983).

The real gravamen of Defendant's Motion is the evidence seized from his vehicle after he

was arrested for DUI, searched, handcuffed, and placed in the arresting officer vehicle. This consists of the marijuana (Count 2), the open containers of alcohol (Count 4), and the drug paraphernalia (Count 6). The United States justifies the search on the grounds that it was incident to a valid arrest and made when Defendant was a recent occupant of the vehicle searched. Upon the evidence adduced, the facts of this case come within the decisions in *Thornton v. United States*, 541 U.S. 615 (2004); and *United States v. Herndon*, 393 F. 3d 665 (6th Cir. 2005), rev'd on other grounds, *Herndon v. United States*, 125 S. Ct. 2279, 161 L. Ed. 2d 1054 (2005)(reversed and remanded for consideration of *Booker*.)

Accordingly, the Motion to Suppress is denied. The Clerk will set this matter for trial.

March 21, 2006.

s/ Michael R. Merz
Chief United States Magistrate Judge

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